IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 289 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIRABHAI KHATUBHAI PAGI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 289 of 1998

MS SADHANA SAGAR for Petitioner No. 1

Mr K C Shah, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH
and
MR.JUSTICE H.H.MEHTA

Date of decision: 05/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

This is an appeal filed by the appellant-original convict, challenging the judgment and conviction order dated 16.2.1998 recorded by the learned Addl.Sessions Judge, Panchmahals at Godhra in Sessions Case No.101/97 under which the learned trial Judge convicted the appellant for offences punishable under sections 498A and 306 of IPC and sentenced him to suffer R.I. for three years and fine of Rs. 1000/-, in default of payment of fine, S.I. for 15 days for the offence under section 498A of IPC. For the offence under section 306 of IPC, the trial court had sentenced the appellant to suffer R.I. for 10 years and to pay fine of Rs. 5000/-, in default of payment of fine, a further S.I. for one month has been imposed by the trial court.

2. The facts of the prosecution case before the trial court may be briefly stated as follows:

The deceased Jasiben was given in marriage to the present appellant about four years before the date of the offence. This can be gathered from the evidence of Laxmanbhai Damor, Exh.13, father of the deceased. At initial stage, the husband and wife were pulling on well and even the parents-in-law of the deceased were staying with the appellant and the deceased. However, there was some quarrel and, therefore, the appellant and the deceased had separated from the parents-in-law of the deceased. The deceased had given birth to a male child namely; Surpal Virabhai and he was naturally staying with his parents. Thereafter, it has come on record that the appellant used to ill-treat the deceased and he used to beat her very frequently. The victim used to go to her parents' place and used to convey the said fact to the parents also. It is also a matter of record that the deceased used to tell the parents that the appellant used to ill-treat the deceased very often and he also used to give abuses to the deceased. That for some time, the deceased had come to the parents place on alternative occasion and thereafter, she was sent back to the place of the appellant. That thereafter, the parents learnt that the deceased had died. Therefore, the father went to Jetpur at the place of the appellant. He noticed that the victim and the son Surpal both were found dead. It seems that the deceased had committed suicide in the company of her son by setting fire on their persons. The father felt that the deceased committed suicide on account of physical and mental torture and cruelty and, therefore, he filed FIR before Khanpur police station.

On account of the filing of the aforesaid FIR, the accused-appellant was arrested, investigation was undertaken and at the conclusion of investigation, charge sheet was also filed against the appellant for offence under sections 498A and 306 of IPC. The case was committed to the court of Sessions. The police investigation papers were supplied to the appellant. Charge was framed and was read over and explained to the appellant. He pleaded not guilty and therefore, evidence was recorded. On conclusion of the evidence, further statement of the appellant was recorded and after hearing the appellant, the trial court found the appellant guilty for the aforesaid two offences. After hearing the appellant on the quantum of punishment, the trial court inflicted the above punishment on the appellant.

3. Feeling aggrieved by the said judgment and conviction order of the trial court, the appellant had preferred this appeal before this court. It has been contended mainly here that there was no evidence before the trial court to come to a finding that the appellant treated the deceased with cruelty or that he extended mental or physical torture to the deceased. That there was no material before the trial court to hold that the appellant abated the deceased in the act of commission of suicide. That therefore, the judgment and conviction order are illegal and deserve to be set aside. The appellant has, therefore, prayed that the present appeal be allowed, the judgment and conviction order be set aside, the appellant be held not guilty for the aforesaid two offences and he may be set at liberty forthwith.

4. On receipt of the appeal, it was ordered to be admitted but bail was refused. At the final hearing stage, the matter was argued on behalf of the appellant by Ms. Sadhana Sagar, who was appointed as amicus curiae. On the other hand, the State was represented by Mr K C Shah. We have heard the learned Advocates for the parties and they have taken me through oral and documentary evidence on record as well as through relevant observations of the trial court made during the course of the judgment.

5. So far as the material evidence is concerned, we find that as regards suicidal death of the deceased is concerned, there is absolutely no dispute between the parties. Even the learned Advocate for the appellant has fairly conceded that this fact is not in dispute and, therefore, it has to be accepted that the deceased died of suicidal death by setting fire on her person which also included death of her son Surpal. Even otherwise

there is ample evidence on record to prove the event. The evidence of Medical Officer on record speaks about the same. Then the post mortem note on record also supports the said fact and even other materials clearly indicate that the deceased Jasiben died of suicidal death. Therefore, we do not discuss the said issue at length and find that the trial court was justified in coming to the conclusion that the deceased Jasiben died of suicidal death.

6. So far as the evidence of ill-treatment and cruelty is concerned, the prosecution has produced evidence on the record of the trial court. There we find evidence of PW 1, Laxmanbhai Damor at Exh.13. He was father of the deceased. According to his evidence, marriage of deceased Jasiben had taken place with the appellant before about four years. He has also stated that at the first instance, the deceased and the appellant were staying with the parents-in-law of the deceased but because of the quarrel, they started staying separately from the parents-in-law of the deceased.

7. This witness has further stated before the trial court that the appellant used to ill-treat the deceased and he used to beat her also. It is further deposed by him that the appellant also used to abuse the deceased. The witness has further stated that his daughter used to convey the said information to him as and when she used to come to him. Now this fact deposed by the said witness is amply corroborated by his own FIR filed Exh.14. There also similar fact has been disclosed by the father in the said FIR. It is also required to be considered that the FIR has been filed without any loss of time and, therefore, there was no time to introduce false information in the FIR which substantially corroborates the testimony of the father. Similar is the case of evidence of Bhuraben Laxmanbhai, PW 2 at Exh.15. She is the mother of the deceased and she has amply supported the evidence of the father. In fact, evidence of the father as well as of the mother corroborates one another and their evidence is further corroborated by the FIR referred to hereinabove. Valiben Bhalabhai, PW 3, Exh.16 is the grand mother of the deceased, who has also supported the evidence of the parents of the deceased stating that the appellant used to ill-treat and beat the deceased. Bhurabhai Damor, PW 4, Exh.17 supports the said evidence of the said witness to some extent. This witness has deposed before the trial court that the husband and the parents-in-law of the deceased used to quarrel with the deceased. Rameshbhai Parshottambhai, PW 6, Exh.19 has deposed before the trial court at page 117

that on enquiry from the appellant it was learnt that there was some quarrel between the appellant and the deceased on the previous night. However, there is no further evidence on the point and the fact of quarrel between the two has not been supported by any other evidence. Learned Advocate for the appellant before the trial court has cross examined those witnesses at a great length but during the course of lengthy cross examination, nothing fruitful was derived from the said evidence. The fact that the marriage took place just four years before the date of commission of suicide also supports the theory of cruel treatment extended by the appellant towards the deceased. The deceased had no reason to die in a short span of four years' married life if she was happy at her in-laws place. The fact that the parents-in-law of the deceased separated also goes to show that there was some sort of difficulty and therefore, the deceased separated from her parents-in-law. Taking an overall view of the evidence of record, it becomes crystal clear that there was sufficient material before the trial court in order to hold that the treatment extended to the deceased was cruel or that the appellant treated the deceased with cruelty both mental and physical. In above view of the matter, we find that the trial court was justified in convicting the appellant for offence under section 498A of IPC. We find no reason to interfere with the said finding of the trial court recorded on appreciation of evidence. There is no error on the part of the trial court in appreciation of evidence on record. Same way, no inadmisible evidence was admitted in evidence and no admissible evidence has been discarded from consideration. We therefore, find that the said findings of the trial court do not require any interference even on re-appreciation of evidence on record. Therefore, we find that the said part of the judgment is not required to be altered, modified or set aside and the judgment and conviction order require to be confirmed.

8. However, so far as the second part of the matter is concerned, the appellant is alleged to have committed abatement to the commission of suicide committed by the deceased at the relevant point of time. Now, so far as cruelty is concerned, it has been proved on record that the appellant had extended cruel treatment both mental and physical to the deceased. There cannot be any dispute about the same. However, the evidence on record does not show that soon before the commission of suicide by the deceased, there was some sort of immediate cause given by the appellant for the deceased to commit suicide. It is not in evidence on record of the trial

court that the mental cruelty was actually extended by the appellant towards the deceased on the date on which the suicide was committed or on the previous evening or night of the commission of the suicide by the deceased. If the mental or physical cruelty is not proved to have been extended soon before the commission of the suicide, then it is difficult to hold that there was some nexus between the commission of suicide by the deceased and extension of mental or physical cruelty by the appellant towards the deceased. It can be gathered that a consistent stand has been taken up that if the harassment - mental or physical torture or cruelty has not taken place within a short vicinity or proximity of the commission of the act of commission of suicide, then in that event, it can be held that the suicide was committed on account of mental or physical cruelty extended by the husband. For this purpose, we can safely refer to a decision of Bansiya vs. State of Rajasthan, reported in 1995 (3) crimes 75, wherein it has been held that cruelty or harassment must have been committed soon before death of a married woman. That the evidence did not disclose any specific overt act of cruelty of any of appellants. The witness of the neighbourhood has turned hostile and the evidence of the mother and the other family members was found to be contradictory. Any way, it was not evident that harassment or cruelty was committed soon before the commission of the suicide.

9. Similar view was adopted in the case of State of Gujarat v. Sunilkumar K Jani. There, this court has observed that mere quarreling with wife will not amount to abetment. Even in the case of Devi Singh v. State of Madhya Pradesh, reported in 1996 (1) Crimes 255 (H.C.), it was observed that there was no evidence to establish the presence of the appellant at the relevant point of time. There was no material to show that the original accused did any act which resulted in abatement. Moreover, the date on which the incident took place, the appellant-convict was not proved to have any quarrel with the deceased which has resulted in some surcharge of atmosphere. In the case on hand, it is not on record that on the date of the incident or soon before the suicide, there was some quarrel between the appellant and the deceased or that the appellant had misbehaved with the deceased or that the appellant had treated the deceased with cruelty, mental or physical. In other words, there is no evidence on record to show that there was some sort of mental or physical cruelty extended by the appellant soon before commitment of suicide by the deceased. In that view of the matter, when the evidence is lacking on the aforesaid aspect of the case, we find

that it is not possible for us to agree with the findings of the trial court that the deceased committed suicide on account of the said mental, physical cruelty or that the appellant committed abatement in the commission of act of suicide by the deceased. We feel that this aspect has not been properly appreciated by the trial court while convicting the appellant for the offence under section 306 of IPC.

10. In above view of the matter, we find that the trial court was justified in convicting the appellant for an offence under section 498A of IPC but the trial court has committed error in holding that the appellant has committed offence under section 306 of IPC. Therefore, the judgment is required to be partly confirmed and it is required to be set aside partly.

11. This appeal is partly allowed. The judgment and conviction order of the trial court convicting the appellant for offence under section 498-A of IPC are hereby confirmed and the appeal of the appellant is partly dismissed to that extent. The judgment and conviction order recorded by the trial court with respect to the offence under section 306 of IPC are set aside. The appellant is ordered to be acquitted for the offence punishable under section 306 of IPC as he is found not guilty for the said offence. The appeal is allowed to that extent. It seems that the appellant has been convicted for offence under section 306 of IPC for 10 years R.I. and, therefore, the appellant would still be in jail. Therefore, it is directed that the appellant shall be set at liberty forthwith, if no longer required in any other case. It is directed that the appellant may be set at liberty only if he has made the payment of fine for the offence under section 498 of IPC or he has undergone jail sentence in default of payment of the said fine. So far as the jail sentence, fine and imprisonment in default of payment of fine for the offence under section 306 of IPC are concerned, the appeal of the appellant has been allowed with respect to that offence and, therefore, the appellant will not be required to undergo the jail sentence, to pay fine or to undergo jail sentence in default of payment of fine for the offence under section 306 of IPC.

5.5.2003 [D P Buch, J.]

[H H Mehta, J.]

msp